

The Khasavyurt Accords: Maintaining the Rule of Law and Legitimacy of Democracy in the Russian Federation Amidst the Chechen Crisis

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NOTES

The Khasavyurt Accords: Maintaining the Rule of Law and Legitimacy of Democracy in the Russian Federation Amidst the Chechen Crisis

Wendy Turnoff Atrokhov*

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|---|-----|
| Introduction | 368 |
| I. Background | 369 |
| A. Chechnya Under Tsarist Rule | |
| B. Chechen Suffering Under Soviet Rule | 370 |
| C. Post-Soviet Chechnya | 372 |
| II. Analysis | 376 |
| A. The Khasavyurt Accords | 376 |
| B. Controversial Aspects of the Khasavyurt Accords | 379 |
| 1. <i>Governance of International Law</i> | 379 |
| 2. <i>The Right to Self-Determination</i> | 379 |
| 3. <i>The Five Year Moratorium</i> | 379 |
| C. The Russian Constitution - Instigator of Hostilities and Barrier to Peace? | 381 |
| 1. <i>Constitutional Provisions on Secession and the Limits of Local Powers</i> | 381 |
| 2. <i>The Russian Constitution as It Relates to the Chechen War</i> | 381 |
| III. Resolving the Status of Chechnya: Three Proposals | 385 |
| A. Amending Article 65 or Granting a Special Status to Chechnya | 385 |
| B. National Referendum on Status of Chechnya | 388 |
| C. The Chechen Position: Chechnya Did Not Secede from the Russian Federation | 390 |
| D. A Pragmatic Compromise: "Special Status" for Chechnya | 391 |
| Conclusion | 392 |

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Introduction

The most remarkable aspect of the three-page agreement that ended the twenty month war between Russia and Chechnya is that it effectively ended all combat and bloodshed while solving none of the political problems that caused the war. The vague agreement signed by Russian General Aleksandr Lebed in August 1996 and the follow-up agreement signed by Russian President Boris Yeltsin and Chechnya President Aslan Maskhadov in May 1997 established a moratorium on the question of Chechnya's status until 2001.¹ While Lebed's sentiment was that the five-year postponement of the issue was critical to allow the two sides to "calmly and soberly . . . sort out [their] relations,"² the Chechens consider the Russian withdrawal to be a victory, and recently celebrated their seventh anniversary of self-proclaimed independence.³ In effect, the two sides have not deviated from their positions as articulated before the war. The Chechens will settle for nothing less than full, unconditional independence, and are demanding a "large-scale political agreement envisaging the establishment of diplomatic relations [between Russia and Chechnya]."⁴ In contrast, the Russian objective is to retain territorial integrity,⁵ and President Yeltsin has "ruled out any agreement with Chechnya that would recognize the separatist republic as an independent country."⁶ As a result, a "diplomatic war"⁷ between Russia and Chechnya has ensued in the three years since the signing of the first agreement at Khasavyurt.⁸

The talks between the two sides are ongoing. Over half of the five-year truce has expired, yet nothing has been resolved. While Russia has expressed a willingness to allow Chechnya greater autonomy as part of a long-term settlement by which Chechnya would remain a constituent republic of the Russian Federation, Chechen President Maskhadov is unwilling to assent to anything less than a comprehensive settlement pro-

1. See Yuri Golotyuk, *Chernomyrdin and Yandarbiyev Manage to Reach Agreement*, RUSSIAN PRESS DIG., Oct. 4, 1996, at 1.

2. David Hoffman, *Chechen, Lebed Sign Peace Deal; Decision on Sovereignty For Russian Region Deferred for Five Years*, WASH. POST, Aug. 31, 1997, at A1.

3. See *In Brief: Chechnya Celebrates*, MOSCOW TIMES, Sept. 8, 1998, at A1, available in LEXIS, EUROPE Library, MOSTMS File.

4. *Russia and Chechnya: One Year Without War*, RUSSIAN PRESS DIG., Sept. 2, 1997, at 1.

5. See Alan Kasayev, *New Khasavyurt Accords on Horizon*, RUSSIAN PRESS DIG., Aug. 8, 1997, at 1.

6. *Yeltsin Rules Out Chechnya Treaty*, WASH. POST, Sept. 29, 1997, at 1.

7. Kasayev, *supra* note 5, at 1.

8. Both Yeltsin and Maskhadov have faced overwhelming hostility from their respective Russian and Chechen constituencies. The Russian parliament initiated impeachment proceedings against Yeltsin in 1999. See *Yeltsin Likely to Face Mid-March Impeachment Vote*, ASSOCIATED PRESS, Feb. 18, 1999. While there is little chance the impeachment effort will succeed, among the five charges garnering the most support in parliament is the allegation of misconduct in launching the war in Chechnya. See *id.* Maskhadov has faced the constant threat of ouster by militant Islamic factions who accuse him of being too cooperative with Russia. See Ruslan Musayev, *Islamic Law Adopted in Chechnya*, ASSOCIATED PRESS, Feb. 4, 1999.

viding for Chechnya's full independence.⁹ With neither side expressing any willingness to compromise on the issue of Chechnya's status, it is difficult to envision an effective resolution of this conflict based solely on the Khasavyurt Accords.

The thesis of this note is that such a permanent agreement can be reached, though not to the improvement of the conditions of chaos and banditry that currently reign in Chechnya. Part I briefly surveys the history of Russian-Chechen hostilities, the most recent war between Russia and Chechnya, and the course of events since the end of the war. Part II examines the Russian-Chechen agreements in light of the Russian Federation's new constitution. Part III sets forth three proposals for a constitutionally-sound resolution to the conflict. The note concludes that the most realistic and practicable solution to the impasse is a regional autonomy arrangement between Chechnya and the Russian Federation granting Chechnya a "special status" among the constituent republics of the Federation.

I. Background

A. Invasion of the Northern Caucasus: Chechnya Under Tsarist Russia

The Russian poet Mikhail Lermantov wrote of the Chechen people in 1832, "Their god is freedom, their law is war."¹⁰ For over three centuries, the Chechens have refused to peacefully assimilate into Russian and Soviet society or acquiesce to the rule of the Tsars, communists, and now the democratically elected Russian government.¹¹ Russia's systematic attempt to pacify the Chechens and occupy their land began in 1783, when Tsar Nicholas II directed his imperial army to invade the Northern Caucasus under the guise of protecting neighboring Russian Christians from the warring native tribes of Muslim bandits.¹² It is more likely that the Tsar desired this valuable land to serve as a strategic buffer between Russia and neighboring Islamic territories.¹³

The war between Russia and Chechnya, and the systematic subjugation and colonization of the Northern Caucasus that followed, lasted for over eighty years, much longer than anticipated by the Tsar.¹⁴ Nicholas

9. See *Russia and Chechnya: One Year Without War*, *supra* note 4, at 1.

10. Edward Klein, *The Conflict in Chechnya* (visited Apr. 26, 1999) <<http://www.wdn.com/asf/chechbp.html>>.

11. See David Remnick, *Letter From Chechnya: In Stalin's Wake*, *NEW YORKER*, July 24, 1995, at 49.

12. See Ruth Daniloff, *Ignoring History in Chechnya*, *BOSTON GLOBE*, Dec. 23, 1994, at 1.

13. See *id.*

14. See CHRISTOPHER PANICO, *CONFLICT STUD. NO. 281, CONFLICTS IN THE CAUCASUS: RUSSIA'S WAR IN CHECHNYA* 20 n.1 (1995) at 2. Chechen leader Sheykh Mansur responded to the Russian invasion by declaring a holy war (*jihad*) against the Russian invaders in 1785. The Russians and Chechens both engaged in the kind of warfare in which they were accustomed. See Alton Donnelly, *The Mobil Steppe Frontier: The Russian Conquest and Colonization of Bashkiria and Kazakhstan to 1850*, in *RUSSIAN COLONIAL*

could not understand how his great army, which had recently defeated Napoleon, failed to overtake the small, primitive region.¹⁵ However, to those who observed the Chechen people and culture, the fierce resistance was unsurprising.¹⁶ For example, the Russian scholar Pluton Zubov observed during the war that the Chechens were "remarkable for [their] love of plunder, robbery and murder, for [their] spirit of deceit, courage, recklessness, resolution, cruelty, fearlessness, [their] uncontrollable insolence and unlimited arrogance," and concluded that "[t]he only way to deal with this ill-intentioned people is to destroy it to the last."¹⁷ The Tsar's "counter insurgency" campaign against the Chechens¹⁸ following the war marked the beginning of an effort to follow through on the course of action articulated and advocated by Zubov. The Chechens were relocated to areas easily controlled by Tsarist forces and replaced by populations of Cossacks. The oppressive campaign was led by Russian General Aleksei Ermolov (1816-26),¹⁹ who desired that "the terror of my name should guard our frontiers more potently than chains of fortresses, that my word should be for the natives a law more inevitable than death."²⁰ After several years of oppressive rule the Chechens were left, for a time, to live in relative autonomy, as Russia's attention was diverted toward bigger conflicts in other regions of the world.²¹

B. Finishing the Tsar's Initiative: Chechen Suffering Under Soviet Rule

The rise of the Bolsheviks brought chaos to the Russian empire, and the people of the Northern Caucasus used the opportunity to band together and declare their independence.²² Both the Red and White Armies²³

EXPANSION TO 1917, at 162 (Michael Rywkin ed., 1988). The Russians engaged in Western-style battle with infantries, formal battles, superior fire power, and scorched-earth tactics. See *id.* The Chechens in contrast used more primitive cavalry and hit-and-run raids. See *id.*

15. See Daniloff, *supra* note 12, at 1.

16. See *infra* note 33 and accompanying text. Among the key characteristics of Chechen culture that made them formidable opponents to invaders was their "extreme vigilance over their freedom and the strong rejection of any authority external to the tribe or clan." MOSHE GAMMER, MUSLIM RESISTANCE TO THE TSAR 21 (1994). The Chechen mountaineers, as they were known, raised their children to be warriors. Their bravery, horsemanship, mastery of daggers, swords and muskets, and ability to camouflage were renowned by the Russians. See *id.*

17. Remnick, *supra* note 11, at 49.

18. See PANICO, *supra* note 14, at 3.

19. For an interesting discussion on Ermolov's role in Chechnya, see GAMMER, *supra* note 16, at 29-38.

20. GAMMER, *supra* note 16, at 34. Ermolov was reprimanded by Tsars Alexander I and Nicholas I for his cruelty. See *id.*

21. See Remnick, *supra* note 11, at 49.

22. See Klein, *supra* note 10, at 2.

23. The Red Army consisted of Bolshevik-led revolutionary soldiers who toppled the Provisional Government of Russia, led by Alexander Kerensley, in the "Great October Revolution" of 1917. See NICHOLAS V. RIASANOVSKY, A HISTORY OF RUSSIA 461 (1993). Civil was erupted after the revolution primarily between the Red Army and counter-revolutionary forces called the "White Movement." See *id.* at 479. The counter-revolutionaries were mainly composed of army officers, cossacks, and members of the bour-

sought the region as their prize.²⁴ The anti-Bolshevik army advanced into the region first, but quickly retreated due to the natives' strong resistance.²⁵ The Soviet Socialist Autonomous Mountain Republic formed in 1921 with consent of the native Caucasians, who accepted Soviet sovereignty in exchange for the Republic's full autonomy in its domestic laws and affairs and the transfer back of lands taken by the Tsars.²⁶ The following year, the Soviet government disbanded the Mountain Republic and merged Chechnya with neighboring Ingushetia as the Chechen-Ingush Autonomous Oblast of the Russian Federation.²⁷ The rise of anti-Soviet sentiment during this period was driven by the collectivization campaign of 1929 and the purges of 1936-38, which led to the execution and internment of thousands of Chechens.²⁸

Joseph Stalin, upon his ascent to power, resolved to finish the task begun by the Tsar a century earlier: the obliteration of Chechnya and the Chechens.²⁹ On Red Army Day in 1944, Soviet officers infiltrated every Chechen and Ingush town and village, rounded up the indigenous populations at gunpoint, and loaded them onto cattle cars for deportation to Kazakhstan and Kirgystan.³⁰ Two years later, the government officially charged those exiled with conspiring with German forces and, "together with German troops, engag[ing] in armed struggle against units of the Red Army," though German troops never came within fifty miles of the region.³¹

One-fourth of the Chechen population perished in the first five years of exile, excluding the thousands who died in transit.³² Russian Constitutional Court Justice Ernest Ametistov recalled the arrival of the exiled Chechens to his hometown in Northern Kazakhstan and observed, "I think such horrors become embedded, genetically, in the consciousness of a people."³³ At the same time, however, the collective strength and rebellious spirit of the people remained intact, perhaps even bolstered somewhat by

geoisie and political groups. *See id.* The Red Army overpowered and effectively defeated the Whites by the end of 1920. *See id.* at 483.

24. *See Klein, supra* note 10, at 2.

25. *See id.*

26. *See id.* at 3.

27. *See id.* Ingushetia is a 4300 sq. km. republic in southern Russia next to Chechnya, which was annexed by the Russian Empire in 1810. *See* Encarta Encyclopedia, *Ingushetia* (visited Apr. 26, 1999) <<http://www.encarta.msn.com>>. The Ingush people are mostly agrarian. *See id.* Like the Chechens, the Ingush are Muslim. Ingushetia separated from Chechnya and formed its own constituent republic when the latter declared its independence. *See id.* *See also* Moshe Gammer, *Unity, Diversity and Conflict in the Northern Caucasus*, in *MUSLIM EURASIA: CONFLICTING LEGACIES* 164-71 (Yaacov Ro'i ed. 1995).

28. *See Klein, supra* note 10, at 3.

29. *See Remnick, supra* note 11, at 49.

30. *See* WILLIAM FLEMING, *THE DEPORTATION OF THE CHECHEN AND INGUISH PEOPLES: A CRITICAL EXAMINATION IN RUSSIA AND CHECHNYA: THE PERMANENT CRISIS* 70 (Ben Fowkes ed., 1998).

31. EDGAR O'BALLANCE, *WARS IN THE CAUCASUS, 1990-1995*, at 165 (1997).

32. *See PANICO, supra* note 14, at 3-4.

33. Remnick, *supra* note 11, at 51.

the hardship of forced exile. Aleksandr Solzhenitsyn, while himself in exile, observed:

there was one nation that would not give in, would not acquire the mental habits of submission — and not just individual rebels among them, but the whole nation to a man. These were the Chechens. They were capable of rustling cattle, robbing a house, or sometimes simply taking what they wanted by force. They respected only rebels. And here is an extraordinary thing — everyone was afraid of them. No one could stop them from living as they did. The regime which had ruled the land for thirty years could not force them to respect its laws.³⁴

The Chechens and Ingush returned to their homeland in 1957, after Khrushchev made his “secret” speech to the Twentieth Party Congress exposing Stalin’s crimes and declaring that the treatment of the Chechen and Ingush had been a mistake.³⁵

C. Post-Soviet Chechnya: The Rise of Dzhokar Dudaev and the War for Independence

Upon the Chechens’ return from exile, Russian-Chechen hostilities remained at bay until the attempted putsch against Soviet Premier Mikhail Gorbachev in 1991.³⁶ The rise of Gorbachev and the series of reforms launched by him under Glasnost³⁷ and Perestroika³⁸ in the late 1980s were slow to penetrate the Northern Caucasus.³⁹ Even the strong separatist movements in neighboring Georgia and Azerbaijan failed to have any significant impact on Communist rule in Chechnya-Ingushetia, which remained constant and instituted few changes.⁴⁰

It was not until the Communist hard-liners’ attempt to overthrow Gorbachev that nationalist fervor reignited in the region.⁴¹ Former Soviet Airforce General Dzhokar Dudaev⁴² was elected as chairman of the All-National Congress of the Chechen People (ANCCP), where he and his followers condemned the hard-liners responsible for the coup and actively supported Boris Yeltsin’s efforts to oppose them.⁴³ Yeltsin, in turn, initially welcomed and supported their efforts to oust the Communist leadership in the region.⁴⁴ At one point Yeltsin even went so far as to encourage minori-

34. Klein, *supra* note 10, at 4 (quoting Aleksandr Solzhenitsyn, *The Gulag Archipelago* (Thomas P. Whitney trans., Harper Collins, 1st ed. 1997) (1973)).

35. See Remnick, *supra* note 11, at 51.

36. See PANICO, *supra* note 14, at 4.

37. Glasnost is the Russian word for “openness.”

38. Perestroika is the Russian word for “reconstruction” and “reorganization.”

39. See O’BALLANCE, *supra* note 31, at 165.

40. See *id.*

41. See PANICO, *supra* note 14, at 4-5.

42. Dudaev was the first Soviet general of Chechen ethnicity, and the former commander of the Soviet airforce base in Estonia. See Valery Tishkov, *Explaining and Categorizing the Chechen War*, in *CONFLICTS IN THE CAUCASUS* 27-28 (Oavel Baev & Ole Berthelsen eds., 1996).

43. See O’BALLANCE, *supra* note 31, at 166. Dudaev organized demonstrations in support of Yeltsin, and called for strikes and mass disobedience. See *id.*

44. See Tishkov, *supra* note 42, at 28.

ties to "take as much sovereignty as you can swallow."⁴⁵

Just as the Chechens looked upon the chaos of the Bolshevik Revolution as their ticket to independence, Dudaev and his supporters seized upon the collapse of the U.S.S.R. as their chance for sovereignty.⁴⁶ Yeltsin's support for Dudaev quickly dwindled as the latter's intentions became clear to the Russian leader. Dudaev's consolidation of power in the two months following the attempted coup in Moscow culminated in his election as Chechen President and proclamation that Chechnya was officially independent, both of which occurred in the span of one week.⁴⁷

Yeltsin responded to the events by immediately declaring a state of emergency in Chechnya.⁴⁸ This tactic proved counter-productive, however, as the emergency decree effectively mobilized nationalist feelings and unity among the Chechens in light of the Russian threat and weakened anti-Dudaev forces.⁴⁹ The same day Yeltsin declared emergency rule, Dudaev canceled the declaration and installed martial law in its place. Chechen national guard troops mobilized to surround the 1000 Russian Interior Ministry troops that had arrived and 30,000 demonstrators took to the streets.⁵⁰ The Russian Parliament voted overwhelmingly to rescind the emergency order two days after it was imposed, and subsequently voted to conduct negotiations with Dudaev.⁵¹ The Parliamentary response reflected Russian opposition to Gorbachev's recent use of force to counter nationalist movements in Latvia, Lithuania, Georgia and Azerbaijan.⁵²

An extended stalemate ensued through 1992-93.⁵³ Reaching the negotiating table proved difficult, as Dudaev's support was founded upon his unwavering defiant nationalism, with Russia as his most ready and most effective target.⁵⁴ Russia offered to recognize the legitimacy of Dudaev's presidency in exchange for his signature on the Federation Treaty acknowledging Chechnya's membership in the Russian Federation.⁵⁵ Dudaev refused to waver from his earliest vow to accept nothing less than full inde-

45. CARLOTTA GALL & CHARLES DE WAAL, *CHECHNYA: CALAMITY IN THE CAUCASUS* 319-20 (1998).

46. See Tishkov, *supra* note 42, at 28.

47. Dudaev was elected president of Chechnya on October 27, 1991, and the Chechen government declared the Republic's independence from the USSR and RSFSR on November 2, 1991. See PANICO, *supra* note 14, at 7.

48. See Tishkov, *supra* note 42, at 29. Chechnya never signed the Russian Federation Treaty, but it was widely rumored that Dudaev was prepared to do so if Yeltsin recognized his election as Chechen President as legitimate. See O'BALLANCE, *supra* note 31, at 170.

49. See PANICO, *supra* note 14, at 7. See also John Kohan, *Fire in the Caucasus*, TIME, Dec. 12, 1994, at 36.

50. See *id.*

51. See *id.*

52. See *id.*

53. Dudaev was left alone by Yeltsin due to the latter's struggle to stay in power. See O'BALLANCE, *supra* note 31, at 175. It was only after Yeltsin was re-elected in 1993 that he was secure enough in his position to turn his attention to the Chechen problem. See *id.*

54. See PANICO, *supra* note 14, at 7.

55. See *id.* at 11.

pendence for Chechnya.⁵⁶ In response, Russia increased military pressure and imposed an economic blockade on the region.⁵⁷ The critical economic situation that ensued led to the Chechen Parliamentary opposition's support of normalizing relations with Moscow while retaining Chechen sovereignty.⁵⁸

The Dudaev regime responded to the opposition by becoming increasingly undemocratic. Dudaev dismissed the Parliament, Constitutional Court, and the Grozny National Assembly,⁵⁹ and disbanded demonstrations calling for a referendum on the matter.⁶⁰ These actions alienated many of Dudaev's allies and powerful Chechen leaders.⁶¹ The Parliament struck back at the leader by initiating impeachment proceedings against him and scheduling a public referendum on the competence of the President and the necessity of the office of president.⁶² On the evening before the scheduled referendum, Dudaev's forces stormed opposition headquarters and dispersed opposition demonstrators, killing as many as fifty people.⁶³ When the Constitutional Court ruled that his disbandment of the Chechen Parliament was unconstitutional, Dudaev responded by shutting down the Court.⁶⁴

Massive conflict erupted among the various opposition factions and the Dudaev government in 1994.⁶⁵ The Russian government actively supported the opposition, and supplied them with funds, weaponry, and, eventually, the assistance of Russian intelligence services who conducted air attacks in Russian helicopters and engaged in a so called "hidden war."⁶⁶ This played right into the hands of Dudaev, who pointed to the groups as traitorous pawns of the Russian Government.⁶⁷ In November, the Russian Federal Intelligence Service (F.S.K.)⁶⁸ mounted an ill-fated invasion of Grozny. Most of the Chechen opposition that pledged to participate in the attack backed out at the last minute.⁶⁹ The mission was disastrous for the Russians, who were overwhelmingly defeated by Dudaev's forces.⁷⁰ Chechen forces captured seventy Russian soldiers, and after initial denials, the Russian Government eventually acknowledged the involvement of Rus-

56. See *id.*

57. See PAVEL BAEV, *RUSSIA'S POLICIES IN THE CAUCASUS* 52 (The Royal Institute for International Affairs 1997).

58. See PANICO, *supra* note 14, at 9.

59. See Tishkov, *supra* note 42, at 29.

60. See PANICO, *supra* note 14, at 9.

61. See BAEV, *supra* note 57, at 53.

62. See PANICO, *supra* note 14, at 9.

63. See *id.*

64. See *id.* This happened one day prior to the violence at opposition headquarters. See *id.*

65. See *id.* at 10.

66. See *id.* at 14.

67. See *id.* at 10.

68. The intelligence service is known as the *Federal'naya Sluzhba Kontrrazvedky*. The FSK is the successor to the domestic division of the former *Komiter Gosudarstvennoi Bezopasnosti* (K.G.B.).

69. See Remnick, *supra* note 11, at 55.

70. See *id.*

sian troops in the operation.⁷¹

The first meeting between a senior Russian official and Dudaev took place on December 6, 1994.⁷² While they reached no resolution to the conflict, both Dudaev and Russian Defense Minister Pavel Grachev vowed publicly that there would be no resort to military action.⁷³ Two days later President Yeltsin issued Decree No. 2166, "On Measures to End the Activity of Illegal Armed Formations on the Territory of the Chechen Republic . . ." ⁷⁴ The decree authorized "Operation Wave," directing the Russian Government "to use all available state means to ensure the security of the state, the rule of law, civil rights and liberties, the defense of public order, the fight against crime, and the disarming of all illegal formations."⁷⁵ Yeltsin kept this decree secret from the public, the Parliament, and most of his own advisers.⁷⁶ On December 11, the Russian armed forces commenced attack and invaded Chechnya from the north, east and west.⁷⁷

Yeltsin's course of action illustrates his reliance on Grachev's boastful assurances that the Russian offensive against Chechnya would take a couple of hours.⁷⁸ In reality, the Russian troops had barely more than a week to prepare for the invasion, in contrast to the Chechen forces who had been preparing since Dudaev declared independence four years earlier.⁷⁹ Commenting on Russia's utter lack of preparedness, retired Russian General Eduard Vorobyov, who refused Grachev's order to head the Russian forces in Chechnya, said, "my God, our tank troops went into battle not even having maps of the city!"⁸⁰

Lacking well-trained ground forces, the Russians relied on heavy artillery and extensive air raids to destroy the relatively small bands of rebel fighters.⁸¹ Their forces destroyed countless villages and cities and killed thousands of civilians with indiscriminate shelling.⁸² Huge segments of the Chechen population that had been neutral throughout the conflict wholeheartedly supported Dudaev after seeing their homes destroyed and family and friends murdered. Russian Human Rights Commissioner Sergei Kovalev estimated that there were 24,000 civilian casualties between November 25, 1994 and January 25, 1995.⁸³ Grozny fell to the Russians

71. See PANICO, *supra* note 14, at 14-15.

72. See *id.*

73. See Alessandra Stanley, *War Threat in Caucasus Is Averted*, N.Y. TIMES, Dec. 12, 1994, at 11.

74. Klein, *supra* note 10, at 11.

75. *Id.*

76. See Remnick, *supra* note 11, at 55.

77. See PANICO, *supra* note 14, at 15.

78. See Remnick, *supra* note 11, at 56.

79. See *id.*

80. *Id.* at 59.

81. See PANICO, *supra* note 14, at 16.

82. See *id.*

83. See Pontus Siren, *The Battle for Grozny: The Russian Invasion of Chechnya, December 1994 - December 1996*, in *RUSSIA AND CHECHNYA, THE PERMANENT CRISIS* 130 (Ben Fowkes ed., 1998).

by mid-February 1995.⁸⁴ The tactics employed by the Russians were described by emergency management consultant Frederick Cuny, who was in Grozny at that time and was later murdered there under mysterious circumstances:

To put the intensity of the firing in perspective, the highest level of firing recorded in Sarajevo was 3500 heavy detonations per day. In Grozny in early February, a colleague of mine counted 4000 detonations per hour. Only in early March did the Russians diminish their shelling and adopt a strategy of starving out the local population.⁸⁵

The war raged on for twenty-one months, punctuated by failed cease fires, annihilation of Chechen villages and their civilian population, and the invasion of Chechen rebels into neighboring Russian towns. Rebel leader Dudaev was killed in April 1996 – a Russian missile launched from a war plane reportedly homed in on signals from his satellite telephone.⁸⁶ Over 1500 Chechen rebels recaptured most of Grozny in a surprise offensive in early August 1996.⁸⁷ On August 12, 1996, the newly appointed head of Yeltsin's National Security Counsel, retired Russian General Aleksandr Lebed,⁸⁸ traveled to Khasavyurt, Dagestan to negotiate with Chechen representatives.⁸⁹ Lebed made this journey on his own initiative with no support from Yeltsin.⁹⁰ Less than three weeks later on August 31, Lebed and rebel leader Aslan Maskhadov signed a landmark accord in Khasavyurt, Dagestan, averting an all-out Russian offensive in Grozny.⁹¹ These Khasavyurt Accords ended the war and demilitarized Chechnya, while postponing a decision on the region's political status until December 31, 2001.⁹² The casualties of the Chechen war are estimated between 30,000 and 90,000.⁹³

II. Analysis

A. The Khasavyurt Accords

The Chechen-Russian truce agreement is brief, ambiguous, and expressly avoids resolving the deep-seeded conflict that ignited the war by deferring

84. See PANICO, *supra* note 14, at 17.

85. Klein, *supra* note 10, at 12.

86. See GALL & DE WAAL, *supra* note 45, at 319-20.

87. See *id.* at 331. Grozny was fortified with an estimated 12,000 Russian troops. See *id.* at 332.

88. After his retirement from the military, Lebed turned to politics and took third place in Russia's 1996 presidential elections. See GALL & DE WAAL, *supra* note 45, at 376. Thereafter he was appointed by President Yeltsin as Secretary of the National Security Counsel and Russian special Envoy to Chechnya. See *id.* He was fired from the government in October 1996, two months after signing the peace accord with Chechen leaders. See *id.*

89. Dagestan neighbors Chechnya and is one of the Russian Federation's constituent republics. See ANATOL LIEVEN, CHECHNYA: TOMBSTONE OF RUSSIAN POWER 19-20 (1998).

90. See *id.*

91. See Hoffman, *supra* note 2, at A1.

92. See *id.*

93. See Siren, *supra* note 83, at 130; GALL & DE WAAL, *supra* note 45, at 360.

a decision on Chechnya's status for five years. It is nonetheless important and remarkable, however, in that it effectively ended the war.

On its face, the document is quite simple. It sets forth "Rules for Clarifying the Basis for Mutual Relations between the Russian Federation and the Chechen Republic," and consists of four provisions.⁹⁴ The first section states that a treaty governing the relations between Russia and Chechnya, to be governed by the norms and principles of international law, must be reached prior to December 31, 2001.⁹⁵ The second section creates a Joint Commission composed of Russian and Chechen officials to facilitate complete withdrawal of Russian troops from Chechen territory, initiate and implement measures to control crime and prejudice, make proposals for developing monetary and budgetary mutual relations, develop programs for the Russian Government to rebuild the socio-economic infrastructure of Chechnya, and supervise agreements concerning supply and distribution of food and medical aid.⁹⁶ The third provision describes the basis of the Chechen legal system, including the "right of nations toward self determination" and the "principles of equal rights of nations."⁹⁷ Finally, the fourth provision provides that the Joint Commission mentioned in the second provision will work until the parties mutually agree to disband.⁹⁸

A second, short peace agreement to the same effect was subsequently signed in May 1997⁹⁹ by President Yeltsin and Chechen President Aslan Maskhadov, who was elected by popular vote in January 1997.¹⁰⁰ After the signing of the treaty, Yeltsin predicted that "[w]ith the help of [other] agreements, we will advance our relations in the economy, trade, and other spheres."¹⁰¹ Yeltsin's prophecy has thus far not come to fruition.¹⁰²

Negotiations have been sporadic and unproductive.¹⁰³ While the Russian side is willing to grant Chechnya broad autonomy in exchange for remaining within the Federation, the Chechens continue to proclaim their

94. See Russian-Chechen Truce Agreement, Aug. 25, 1996, Rus.-Chechnya (visited Apr. 26, 1999) <<http://www.chechnya.org/constit.html>> [hereinafter *Khasavyurt Accords*].

95. See *id.*

96. See *id.*

97. *Id.*

98. See *id.*

99. TREATY ON PEACE AND THE PRINCIPLES OF MUTUAL RELATIONS BETWEEN THE RUSSIAN FEDERATION AND THE CHECHEN REPUBLIC OF ICHKERIA (1997), reprinted in STATUTES & DECISIONS: THE LAWS OF THE USSR AND ITS SUCCESSOR STATES (Sarah J. Reynolds trans., July-Aug. 1998).

100. See GALL & DE WAAL, *supra* note 45, at 366. See *Russia and Chechnya Sign Peace Treaty*, CURRENT DIG. OF THE POST-SOVIET PRESS, June 11, 1997, at 10.

101. Richard C. Paddock, *Russians, Chechens Solidify Peace through Brief Treaty*, L.A. TIMES, May 13, 1997, at 2.

102. For example, Russia is currently considering the construction of a new oil pipeline to bypass Chechnya. This would effectively deny the Republic one of its key potential sources of income. See Sanobar Shermatova, *Is Moscow Preparing for Chechnya's Independence?*, MOSCOW NEWS, Sept. 25, 1997, available in LEXIS, EUROPE Library, MOSNWS File.

103. See *id.*

independence, a point which they refuse to negotiate.¹⁰⁴ Moreover, the Chechen government has gone out of its way to defy Russian law.¹⁰⁵ For example, in September 1997, the Chechen government publicly executed four convicted criminals by firing squad in violation of the Russian moratorium on capital punishment.¹⁰⁶ Chechen officials claimed that the punishment was in accordance with Islamic Law.¹⁰⁷ The Chechen government also announced plans to issue its own passports.¹⁰⁸ These tensions between Russia and Chechnya have flared amidst a backdrop of chaos and banditry in Chechnya, where over 400 Russians and foreigners have been kidnapped since the end of the war in 1996.¹⁰⁹

Each side is playing a "risky game of brinkmanship," testing the other's resolve while stopping just short of resuming the war.¹¹⁰ There is presently no war in Chechnya, but it hardly seems accurate to characterize the present state of affairs between Russia and Chechnya as peaceful.

104. See Oleg Shchedrov, *Russia Says No Plans to Recognize Chechnya*, REUTERS, Sept. 25, 1997, available in LEXIS, WORLD Library, TXTNWS File.

105. See, e.g., *Chechen Election Law at Variance with Russian Constitution*, ITAR-TASS, Jan. 27, 1997, at 1.

106. See Michael R. Gordon, *Executions in Chechnya Flout Appeals from Russian Leaders*, N.Y. TIMES, Sept. 19, 1997, at A3.

107. See *id.*

108. See *Rebel Chechnya Says to Issue Own Passports Soon*, REUTERS, Oct. 7, 1997, at 1.

109. See Robert Parsons, *Chechen President Orders Kidnap Crackdown*, BBC NEWS, Dec. 13, 1998, available in LEXIS, WORLD Library, BBCSWB File. A number of powerful kidnapping gangs emerged in Chechnya after the war ended. See *id.* Some of these gangs proclaim to be Islamic militants bent on ridding the region of all Western influence. See *id.* The kidnappings are usually for ransom, and typically hostages are released once the demanded sum is paid. See Ruslan Musayev, *Western Hostages Beheaded in Chechnya*, MOSCOW TIMES, Dec. 9, 1998, available in LEXIS, EUROPE Library, MOSTMS File. Among those kidnapped was the Russian government's envoy to Chechnya, Valentin Vlasov, who was taken in broad daylight by five gunmen and released unharmed six months later. See Oksana Yablokova, *Yeltsin's Chechen Envoy Goes Free*, MOSCOW TIMES, Nov. 14, 1998, available in LEXIS, EUROPE Library, MOSTMS File. Another Russian government official, an ethnic Uzbek and a Moslem, was abducted in Chechnya after attending a speech by President Maskhadov on the kidnapping crisis in the region. See *Abducted Official Found Dead in Chechnya*, MOSCOW TIMES, Oct. 6, 1998, available in LEXIS, EUROPE Library, MOSTMS File. Less than a week after his abduction the official was found dead, and a note left with his body read: "To all Russians who are hostile to Chechnya. Such will be the fate of everyone who is in Chechnya and works for [Russian Intelligence]." *Id.* One of the most tragic and gruesome episodes of abduction and murder occurred in December 1998, when the severed heads of three Britons and one New Zealander kidnapped two months earlier were discovered lined up on the side of a Chechen highway. See Ruslan Musayev, *Western Hostages Beheaded in Chechnya*, MOSCOW TIMES, Dec. 9, 1998, available in LEXIS, EUROPE Library, MOSTMS File. The men were in Chechnya to install a satellite telecommunications system, and their murder prompted President Maskhadov to declare a state of emergency in an attempt to quell the banditry in Chechnya. See *Relatives Await Hostages' Bodies*, IRISH TIMES, Dec. 28, 1998, available in LEXIS, MARKET Library, PROMT File; Robert Parsons, *Chechen President Orders Kidnap Crackdown*, BBC NEWS, Dec. 13, 1998, available in LEXIS, WORLD Library, BBCSWB File.

110. Timothy Heritage, *Russia-Chechnya Relations Face Big Tests After War*, REUTERS, Oct. 1, 1997, available in LEXIS, WORLD Library, TXTNWS File.

B. Controversial Aspects of the Khasavyurt Accords

Brevity and ambiguity were elevated to an art form in the Khasavyurt Accords. Masterful use of vague terms and intentional omissions allowed each side to save face by reporting back to their constituencies with their own subjective interpretation of the treaty's effect. Following the signing, three aspects in particular were the subject of controversy: that international law governs the agreement, the meaning and use of "right of nations toward self-determination" and "the principles of equal rights of nations," and the five year moratorium on Chechnya's status.¹¹¹

1. Governance of International Law

The provision in the Khasavyurt Accords that international law shall govern Russian–Chechen relations was a term for which the Chechen side fought to the end.¹¹² That international law will govern and not the Russian Constitution was a major concession won by the Chechens in their bid for recognition; governance of international law is reserved for treaties between independent states and not for domestic agreements. The term, in effect, allowed the Chechens to broadcast the signing of a peace treaty between states rather than a domestic agreement.¹¹³ While this concession was made to end the war, the Russian spin on the provision is that international law is a component of the Russian Federation's legal system, and effectively part of Russian domestic law.¹¹⁴ This is clearly expressed in Article 15.4¹¹⁵ of the Russian Constitution.¹¹⁶ A former Yeltsin Press Secretary characterized the agreement and its terms as "more political-psychological in nature than it is legal."¹¹⁷ Moreover, the extent to which the international law provision may imply recognition of an independent Chechnya is mitigated by the absence of any language regarding a completely independent status for Chechnya.¹¹⁸

2. The Right to Self-Determination

Another aspect of the Khasavyurt Accords that the Chechens believe demonstrates their independence is the provision recognizing that the Chechen

111. Dudaev issued a decree on January 19, 1994, that officially renamed the territory "The Chechen Republic – Ichkeriya." See JOHN P. DUNLOP, *RUSSIA CONFRONTS CHECHNYA* 151 (1998).

112. See *Russia and Chechnya Sign Peace Treaty*, *supra* note 100, at 10.

113. See *id.* See also *Kremlin Says Chechen Ties Meet International Norms*, REUTER, May 12, 1997, available in LEXIS, WORLD Library, TXTNWS File.

114. See *Russia and Chechnya Sign Peace Treaty*, *supra* note 100, at 10.

115. KONST. RF (1993) art. 15, § 4. "Universally acknowledged principles and standards of international law and international treaties of the Russian Federation shall be a part of its legal system. Should an international treaty of the Russian Federation establish rules other than those established by law, the rules of the international treaty shall be applied." *Id.*

116. The Constitution of the Russian Federation was approved in a national referendum on December 12, 1993, and adopted after a final count of the votes. See CONSTITUTION OF THE RUSSIAN FEDERATION, SPECIAL PRESIDENTIAL EDITION 15 (Vladimir V. Belyakov & Walter J. Raymond eds., 1994).

117. *Russia and Chechnya Sign Peace Treaty*, *supra* note 100, at 10 (quoting Sergei Yastrzhembsky, former Presidential Press Secretary).

118. See *id.*

Republic's legal system is based "upon the right of nations toward self-determination," and "upon the principles of equal rights of nations."¹¹⁹ Specifically, the Chechen signatories viewed these provisions as creating legal guidelines for international recognition of Chechnya as an independent, sovereign state.¹²⁰ Their position is bolstered by the omission of any reference to the 1975 Helsinki Act, which provides that "nations [sic] (ethnic group[s]) can exercise their right to self-determination only within existing state boundaries."¹²¹

The Russian position regarding the Republic's right to self-determination is that such right exists consistent with other sovereign parts of the Federation.¹²² In other words, all of the constituent members of the Russian Federation are sovereign to varying degrees in accordance with power-sharing treaties between each republic and the federal government. This is the kind of relationship envisioned by the Russian government, and it interprets the agreement's self-determination provisions as the framework for such a bilateral treaty between the Federation and the Republic of Chechnya.¹²³

3. *The Five Year Moratorium*

Perhaps the most controversial provision of the Khasavyurt Accords is the five year moratorium on deciding Chechnya's status.¹²⁴ One factor contributing to the controversy was the Accords' failure to mention Russia's territorial integrity.¹²⁵ President Yeltsin's main justification for the war was to preserve this territorial integrity and thus conform to the Russian Constitution, which impliedly prohibits secession.¹²⁶ Such an important omission could indicate that recognition of an independent Chechnya remains a possibility, which in turn would clearly run counter to the Constitution.¹²⁷

In sum, the ambiguities in the Khasavyurt accords are numerous and deliberate. All of the provisions in controversy revolve around the issue that instigated the war: the status of Chechnya. The Chechens view the terms as a precursor for full recognition as an independent state, while Russia interprets the agreement as providing for Chechen sovereignty

119. KHASAVYURT ACCORDS, *supra* note 94.

120. See Nikolai Vavilov, *Khasavyurt Accords Were Signed Year Ago*, RUSSIAN PRESS DIG., Aug. 29, 1997, available in LEXIS, EUROPE Library, SPD File.

121. *Id.*

122. *See id.*

123. *See id.*

124. KHASAVYURT ACCORDS, *supra* note 94.

125. See Vladimir Guliyev & Alla Barakhova, *Critics of Lebed and Maskhadov Are Not Right*, RUSSIAN PRESS DIG., Oct. 4, 1996, available in LEXIS, EUROPE Library, SPD File.

126. *See Russia and Chechnya Sign Peace Treaty*, *supra* note 100, at 10.

127. See Konstantin Katanyan, *Yeltsin Cannot Grant Chechnya Independence*, NEZAVISIMAYA GAZETA, Aug. 22, 1997, at 2. See also Pavel Felgenhaur, *No Hope for Independence*, MOSCOW TIMES, Aug. 29, 1996, available in LEXIS, EUROPE Library, MOSTMS File (arguing that if "Yeltsin promotes or abets any vague agreement that can be interpreted by the Chechens as conceding some form of sovereignty, he can be accused of violating his presidential oath.").

within the Russian Federation.¹²⁸ The surprising culprit behind this dead-end impasse, and arguably the war itself, is the Russian Constitution. Problems and loopholes in the Constitution along with possible constitutionally compatible resolutions to the conflict are addressed in the following section.

C. The Russian Constitution – Instigator of Hostilities and Barrier to Peace?

The Russian Constitution was adopted by referendum in December 1993 in the immediate aftermath of President Yeltsin's violent confrontation with his Vice President and the Russian Supreme Soviet.¹²⁹ Support for both the government and democracy were at a low point, and Yeltsin wanted a new constitution in place in order to move forward with his reformist agenda.¹³⁰ To ensure that Parliament's anti-reform oppositionist members could not tamper with this new constitution, the drafters aimed to effectively "lock in democracy with a nearly unamendable constitution."¹³¹ Another concern of the government at the time was that the atmosphere of chaos in the country and unrest in some of the republics would lead to the disintegration of Russia, as happened with the U.S.S.R. two years earlier.¹³² Thus, there was no serious discussion or debate about omitting any provision on secession from the Constitution. The drafters assumed that allowing it would spark secessionist movements and hasten Russia's demise.¹³³ On this assumption, the Constitution's sponsors took the gamble that the Constitution would be able to handle all existing and future problems. The Russian leadership is now paying for this risk with regard to Chechnya.¹³⁴

1. *Relevant Constitutional Provisions on Secession and the Limits of Local Powers*

There are no provisions in the Russian Constitution regarding secession. Moreover, constitutional articles pertaining to Russian territory imply that secession is unconstitutional. Article 4 is the key provision: Article 4.1 states that the "sovereignty of the Russian Federation shall extend to its

128. *See id.*

129. *See* Edward W. Walker, *Constitutional Obstacles to Peace in Chechnya*, *EAST EUR. CONST. REV.*, Winter 1997, at 55. The violent events that took place in Moscow Oct. 3-4, 1993, ended the standoff between President Yeltsin and anti-reformist members of the Russian Parliament, with whom then Vice President Aleksandr Rutskoi sided. Yeltsin tried to dissolve Parliament the month prior, but certain deputies refused to obey and installed Rutskoi as the Russian President. Rutskoi and the conservative deputies armed themselves and took over the parliament building in Moscow, known as the "White House." After three days of violent clashes throughout the city, the events culminated on October 4, when tanks rolled up to the White House and shelled it for most of the day. This was accompanied by sniper fire by both sides. Official reports tolled the dead at 146, with approximately 1000 injured. *See id.*

130. *See id.* at 55.

131. *Id.*

132. *See id.* at 59.

133. *See id.* at 58-59.

134. *See id.* at 59.

entire territory";¹³⁵ Article 4.2 states that "[t]he Constitution of the Russian Federation and federal laws shall have priority throughout the territory of the Russian Federation";¹³⁶ and Article 4.3 states that the "Russian Federation shall ensure the integrity and inviolability of its territory."¹³⁷ Article 80, in turn, mandates that the President "take measures to protect the sovereignty, independence and state integrity of the Russian Federation and ensure the coordinated action and interaction of the bodies of state authority."¹³⁸ Article 65.1 includes "the Chechen Republic" as an enumerated constituent republic of the Russian Federation.¹³⁹ Although Chechnya had already declared its independence when this new constitution was being drafted, the drafters and voters who ratified the document understood Chechnya to be part of the Russian Federation. Further, the international community recognized the Russian Federation based on the Soviet-era Russian borders, which included Chechnya as part of the Chechen-Ingush Autonomous Republic.¹⁴⁰

The Russian Constitution confers benefits on local constituents and places certain restrictions on the reach of local governments.¹⁴¹ Article 6 provides for equal rights among all citizens of the Russian Federation.¹⁴² Article 32 allows public participation in elections, referenda, and in public affairs.¹⁴³ Article 46.1 guarantees access to and protection by the judiciary.¹⁴⁴ Articles 57 and 59 impose affirmative duties of the citizens to pay taxes, and where legally mandated, serve in the military.¹⁴⁵

The Russian Constitution's limits on local powers are mostly confined to the economic sphere and protection of individual rights. Article 74.1 bans internal customs frontiers and other trade restrictions.¹⁴⁶ Article 14.2 is similar to the First Amendment of the United States Constitution, separating church and state and mandating that all religions be treated as equal before the law.¹⁴⁷ Article 19.2 guarantees equal protection with regard to "sex, race, nationality, language, [and] origin," among other status.¹⁴⁸ Article 75.1 disallows use of currency other than the Russian ruble.¹⁴⁹ Finally, Article 95 obligates each member of the Russian Federation to send representatives to the bicameral legislature. Two representa-

135. KONST. RF (1993) art. 4, § 1.

136. *Id.* art. 4, § 2.

137. *Id.* art. 4, § 3.

138. *Id.* art. 80.

139. *See id.* art. 65, § 1.

140. *See Walker, supra* note 129, at 56.

141. Part of the hostilities between the Russian and Chechen authorities revolves around the Chechen government's imposition of local laws and regulations that go beyond its local power and violate several provisions of the Russian constitution. *See supra* notes 48-64.

142. *See KONST. RF* (1993) art. 6.

143. *See id.* art. 32.

144. *See id.* art. 46, § 1.

145. *See id.* arts. 57, 59.

146. *See id.* art. 74, § 1.

147. *See id.* art. 14, § 2.

148. *Id.* art. 19, § 2.

149. *See id.* art. 75, § 1.

tives from each local government serve on the Federation Council (upper house), and elected representatives from each republic sit in the Duma (lower house).¹⁵⁰

2. *The Russian Constitution as It Relates to the Chechen War*

The constitutional provisions listed above are of key importance in understanding the Chechen war, the subsequent settlement, and the lingering problems between Russia and Chechnya. The initial intervention and invasion of Chechnya was legally justified by the Russian Government under several provisions. First, Article 71.1 empowers the President "to protect the sovereignty, independence and integrity" of the Russian Federation.¹⁵¹ Second, the article gives the federal government exclusive control over defense and security.¹⁵² Further, the Russian Government justified its intervention by pointing to the Chechen government's flagrant violations of the numerous provisions limiting the power of local governments.¹⁵³

The twenty-one month war did nothing to improve the situation in Chechnya. While the Chechen government elected after the war was the one most agreeable to Moscow at the time of the elections, it still engages in practices that are in direct violation of the Russian Constitution.¹⁵⁴ The Chechen leaders believe the Republic to be independent and insist upon reparations from the Russian government to rebuild their destroyed country.¹⁵⁵ The Russian government rejects their claim of independence.¹⁵⁶ As a result, the post-Khasavyurt negotiations have encountered the same stalemate that caused the war. The root of this seemingly endless impasse is Article 65¹⁵⁷ of the Russian Constitution and the lack of a constitutional mechanism for secession.¹⁵⁸ The Russian government believes that it cannot accept Chechen independence within the bounds of the current Russian Constitution.¹⁵⁹

If amending the Russian Constitution was a realistic option, the most direct way to resolve the problem would be to amend the Constitution either to allow secession or to exclude the Chechen Republic from Article 65. Chapter 9 of the Russian Constitution contains the procedure by which the Constitution can be amended. To amend chapters 1, 2 or 9 – the fundamental chapters – it is necessary for three-fifths of the Federation

150. See *id.* art. 95.

151. *Id.* art. 71.1.

152. See James S. Robbins, *Sovereignty Building: The Case of Chechnya*, 21 FLETCHER F. WORLD AFF. 17, 28.

153. See *supra* notes 48-64.

154. See Shermatova, *supra* note 102, at 1.

155. See Vladimir Shpak, *It is Necessary to Talk with Chechens in Chechen Lingo*, RUSSIAN PRESS DIG., Aug. 8, 1997, available in LEXIS, EUROPE Library, SPD File.

156. See Robbins, *supra* note 152, at 31.

157. Article 65 lists the Chechen Republic as a constituent republic of the Russian Federation. See *supra* note 139 and accompanying text.

158. See Walker, *supra* note 129, at 55-56.

159. See Valery Shanayev, *Peace in Chechnya Must Be Reached on Constitutional Basis*, ITAR-TASS, Oct. 4, 1996, at 1.

Counsel and the State Duma to vote for a Constitutional Assembly.¹⁶⁰ This Assembly will then have the option of either "confirm[ing] the immutability of the Constitution of the Russian Federation or drafting a new Constitution of the Russian Federation."¹⁶¹ Drafting a new Constitution would require two-thirds of the votes of all assembly members or a nationwide simple majority on a referendum (Article 135).¹⁶²

Amending Chapters 3-8 of the Constitution is almost as impracticable: it requires approval of three-fourths of the Federation Counsel, two-thirds of the State Duma, and two-thirds of the legislatures of the eighty-nine members of the Russian Federation.¹⁶³ Article 137 specifically addresses amendments to Article 65, the article addressing the constituent territories of the Russian Federation, but only with regard to additions, name changes, and territorial-status changes.¹⁶⁴ Secession is not mentioned.¹⁶⁵

Essentially, the Constitution's drafters were successful in making their "unamendable constitution"¹⁶⁶ — the requirements of Chapter 9 are so onerous as to be nearly impossible.¹⁶⁷ Thus, as the Russian Constitution currently exists, a simple or conventional resolution to the Chechen conflict is not possible. However, constitutional interpretation is still in its

160. See KONST. RF (1993) art. 135, § 2.

161. *Id.* art. 135, § 3.

162. See *id.* art. 135, § 2.

163. See *id.* art. 136.

164. See *id.* art. 137.

165. See *id.*

166. *Id.*

167. Russia scholar Edward W. Walker cites two alternatives that, in hindsight, would have been more prudent for the Russians to consider:

As the Georgian Constitution was being drafted in early 1995, its sponsors were acutely aware of Tbilisi's violent conflicts with . . . regional tensions throughout the country . . . [and] therefore decided that provisions on the relative powers of the national government and the regions should be omitted from the Constitution's text and that Georgia should, for the time being at least, establish a unicameral legislature With the benefit of hindsight, the drafters of the Russian constitution might have been wise to adopt a similar approach with Chechnya. As the Russian Constitution was being drafted, Chechnya had already declared its independence and refused to participate in the writing of the federal constitution. Under these circumstances, savvy constitutional drafters could have decided to leave Chechnya out of the list of republics in Art. 65 and to include a provision stating that Chechnya's status would be determined at a later date. Alternatively, Art. 65 could have been made easier to amend.

Walker, *supra* note 129, at 59.

A second option would have been to include a provision on secession in the constitution. See *id.* Walker argues that this inclusion would have actually protected and enhanced the territorial integrity of the Russian Federation. See *id.*

Procedures for [secession] . . . could have been made burdensome, [for example, by requiring] two referendums five years apart in which at least 60 percent of the electorate in a particular member of the Federation voted for independence. Only in Chechnya might popular support for secession have been sufficient to meet these terms. And even in Chechnya, a realistic exit option for Chechnya might have ameliorated tensions and avoided the war. Alternatively, it might have postponed a crisis long enough for Dudaev, who was deeply unpopular in Chechnya prior to the war, to lose power, at which point it might have been possible to negotiate autonomy for Chechnya on the Tartarstan model.

formative stage, as many of the Constitution's ambiguities have not been subject to interpretation by the new Russian Constitutional Court.¹⁶⁸ A few "backdoor" alternatives may hold the key to finding a settlement satisfactory to both sides.

III. Resolving the Status of Chechnya: Three Proposals

Three possible approaches may guide the Russians and Chechens down the path towards a permanent settlement. The first option is to amend Article 65 of the Russian Constitution in accordance with Article 138 to allow a special status for Chechnya. The second is to hold a nationwide referendum on the status of Chechnya. A final option involves the questions of whether or not Chechnya actually seceded, and whether international law would define Chechnya as an independent state.

A. Amending Article 65 or Granting a Special Status to Chechnya

Article 65 lists the members of the Russian Federation, and it can be amended in accordance with Article 137. Article 137.1 states that

[a]ny change in Article 65 of the Constitution of the Russian Federation, establishing the make-up of the Russian Federation, shall be made on the basis of the federal constitutional law on the Admission to the Russian Federation and creation within it of a new member to the Russian Federation *and on the change of the constitutional and legal status of a member of the Russian Federation*.¹⁶⁹

Article 66.5 states that the "status of a member of the Russian Federation may be altered by the mutual consent of the Russian Federation and the member of the Russian Federation in accordance with a federal constitutional law."¹⁷⁰

Based on these provisions, Russian Constitutional Court Chairman Marat Bagley stated that "the status of the Chechen Republic should differ from the status of other constituent parts of the Russian Federation . . . since the constitution envisages the possibility of changes in the status of a Federation constituent part."¹⁷¹ Yeltsin's then National Security Secretary Ivan Rybkin also acknowledged this possibility and went further to say that the Chechens' desire to take over most government functions would be acceptable to the Russian government as long as a single defense

Id.

See also Pavel Felgenhauer, *A Chechnya Turning Point*, MOSCOW TIMES, Aug. 22, 1996, available in LEXIS, EUROPE Library, MOSTMS File (commenting on the unlikelihood of amending the Russian Constitution to allow secession).

168. See *Press Conference with Constitutional Court Chair Marat Baglay*, OFFICIAL KREMLIN INT'L NEWS BROADCAST, Feb. 25, 1997, available in LEXIS, NEWS Library, ARCNWS File [hereinafter BAGLAY INTERVIEW].

169. KONST. RF (1993) art. 137, § 1 (emphasis added).

170. *Id.* art. 66, § 5.

171. *Russian Constitutional Court Chief in Favor of Special Status for Chechnya*, BBC SUMMARY OF WORLD BROADCASTS, Sept. 11, 1997, available in LEXIS, WORLD Library, BBCSWB File.

and economy are preserved.¹⁷²

While the Russian Constitutional Court has thus far shied away from controversial decisions and followed President Yeltsin's agenda, Baglay stated upon his appointment as Chairman in February 1997 that, "[m]y opinion and that of my colleagues is that by interpreting the Constitution in the Constitutional Court, many vague parts of the Constitution could be regulated. And it is necessary to initiate amendments there as soon as possible."¹⁷³

If Chechnya is granted special status, the more difficult issue will be the nature of its relationship with Russia. The Russian Constitution allows members of the Federation to conclude bilateral arrangements with the federal government on the distribution of state and local power.¹⁷⁴ The first constitutional arrangement along these lines was concluded with Tartarstan.¹⁷⁵ This treaty recognizes Tartarstan as a "state" that may participate in international relations by establishing its own "relations with foreign states" and concluding agreements with them.¹⁷⁶ Such agreements must be consistent with the Russian Constitution and the international obligations of the Russian Federation.¹⁷⁷

Tartarstan is an oil-producing region with important aircraft, automotive, and electronic enterprises.¹⁷⁸ The Republic depends on federal military orders to keep its industries running.¹⁷⁹ The treaty effectively granted Tartarstan broad autonomy within the Federation while solidifying their economic links with Russia on which their stability and growing prosperity depend. Tartarstan has since opened trade offices, referred to as "embassies," in Australia, Turkey, and other countries.¹⁸⁰ Only the Tartar flag flies over the Republic's government buildings, and local automobile license plates are unique to the Republic.¹⁸¹

The "Tartarstan Model" would seem an ideal prototype for a treaty between Russia and Chechnya on an economic level. However, an additional component accommodating the Chechens' right to Islamic self-identity would be requisite to any Russian-Chechen treaty.¹⁸² While both Tartarstan and Chechnya are Muslim Republics, they interpret Islam differently.¹⁸³ Tartar nationalists take pride in their Europeanized Islam, and

172. See *Russia, Chechnya to Speed Up Long-Term Peace Deal*, CNN INTERACTIVE (Aug. 18, 1997) (visited Apr. 26, 1999) <<http://cnn.com/world/9708/18/russia.chechnya/index.html>>

173. BAGLAY INTERVIEW, *supra* note 168.

174. See Gennady M. Danielenko, *The New Russian Constitution and International Law*, 88 AMER. J. INT'L L. 3, 457 (1994).

175. See *id.*

176. Danilenko, *supra* note 174, at 457.

177. See *id.*

178. See *id.*

179. See *id.*

180. See Carol J. Williams, *The Ethnic Patchwork is Fraying*, L.A. TIMES, Aug. 21, 1995, at A6.

181. See *id.*

182. See Yuri Buyda, *Islam Tests Federation*, MOSCOW TIMES, Sept. 24, 1997, at 1.

183. See *id.*

"tend to regard religion primarily as a tool in their 'national liberation struggle,' rather than its rationale; they see themselves as Muslim Tartars, not Tartar Muslims."¹⁸⁴ In contrast, the Chechens view Islam as a way of life as well as a religion.¹⁸⁵ Just weeks after the war's end, the Chechen government introduced a criminal code based on Muslim Sharia law into the Republic, which is enforced both over and in violation of the Russian Constitution.¹⁸⁶ For example, public drinking is now forbidden, and punishable by up to forty lashes, and several public executions have taken place.¹⁸⁷ Most recently, President Maskhadov revoked the powers of the Chechen Parliament and ordered the drafting of a new Islamic Constitution.¹⁸⁸ If Chechnya is going to retain some status within the Russian Federation, it is clear that a treaty granting broad economic autonomy and support will not be enough. If this "special status" scenario is to be realized, Russia must recognize the establishment of Islam in Chechnya.¹⁸⁹

This "special status," in turn, would require a special legal relationship between the federal and republican entities.¹⁹⁰ For example, the Sharia Court and law could be recognized as an autonomous component of the Russian legal system.¹⁹¹ Technically, Chechnya could retain a status akin to that between Puerto Rico and the United States, or Hong Kong and China.¹⁹² The risk that other Republics may make similar demands is not

184. Christian Caryl, *Islam's Hotbed of Stability*, U.S. NEWS & WORLD REP. ON LINE, Feb. 17, 1997, at 2.

185. Buyda, *supra* note 182, at 2. This was not always the case in Chechnya. Dudaev was a prime example of a secular leader who, in times of crisis, used Islam as a political tool to exploit certain ideas. See YAAKOV RO'I, *MUSLIM EURASIA: CONFLICTING LEGACIES* 46 (1995). Dudaev initially rejected the idea of using Islam in politics. *See id.* However, when his authority was weakened by oppositionists, he formed a bloc with religious Islamic groups before the war, and called for the "formation of organs of state power in the republic based on historical traditions of the Chechen nation, the principles of Islam, the Shariat and the priority of human values." *See id.* at 46-47. Dudaev promulgated a new constitution in February 1993 that proclaimed Islam the state religion. *See id.* at 47.

186. *See* Michael Specter, *Russians Gone, Chechens Now 'Struggle for Allah'*, INT'L HERALD TRIB., Nov. 2, 1996, at 1. Chechen President Maskhadov also dissolved all secular courts, announced plans to establish Islamic banks and introduce a new currency, and post municipal signs in Arabic. *See id.* In addition, Chechnya Vice President Vakha Arsanov recently announced a new rule that female students and civil servants must dress in traditional Islamic clothing. *See id.*

187. *See id.*

188. *See* Ruslan Musayev, *Islamic Law Adopted in Chechnya*, ASSOCIATED PRESS, Feb. 4, 1999. Maskhadov's decision was the result of pressure from the militant Islamic opposition who claim that the Chechen President is too cooperative with the Russian government. *Id.* These opposition leaders have joined to form a shadow Islamic government which they claim supersedes Maskhadov's rule. *See Tensions Mount in Chechnya as Rebel Forces Put on Alert*, MOSCOW TIMES, Feb. 16, 1999, available in LEXIS, EUROPE Library, MOSTMS File.

189. *See* Buyda, *supra* note 182, at 2.

190. *See id.*

191. *See id.*

192. Puerto Rico is a commonwealth in free association with the United States. *See* MORTON H. HALPERIN & DAVID J. SCHEFFER, *SELF-DETERMINATION IN THE NEW WORLD* 148 (1992). The status of Hong Kong is especially interesting and instructive as an example of a sovereign territory. Hong Kong became a Special Administrative Region (SAR) of

so great; Islam and the separatist movement is much stronger in Chechnya than in any of the other republics.¹⁹³

The foregoing proposal involves mutual compromise among the parties, and may be the best plan for ensuring peace and some measure of stability in Chechnya. However, granting Chechnya a special status in the Federation would still require the passage of a constitutional amendment or law to avoid violating several constitutional provisions on the supremacy of federal law throughout the Federation.¹⁹⁴ Article 66.5 provides for a constitutional law to govern a change of status as mutually agreed by the Republic and Federation governments.¹⁹⁵ Based on this provision, it is feasible for the Federation to pass a constitutional law recognizing the coexistence of Sharia law in Chechnya based on the constitutionally protected right to self-determination as set forth in the preamble and Article 5 of the Russian Constitution.¹⁹⁶

B. National Referendum on Status of Chechnya

A second possibility would be to hold a national referendum on the status of Chechnya. This option has been advocated by certain Russian officials and journalists as the only "constitutional way out of the impasse."¹⁹⁷ Presumably, the authority to hold a national referendum on Chechnya would be derived from Article 3 of the Constitution: Article 3.1 states that the "multi-ethnic people of the Russian Federation shall be the bearers of its sovereignty and the sole source of authority in the Russian Federation";

China when it ceded from British control in 1997. See HURST HANNUM, *AUTONOMY, SOVEREIGNTY, AND SELF-DETERMINATION: THE ACCOMMODATION OF CONFLICTING RIGHTS* 137 (2nd ed. 1996). The terms of this status were set forth in a Joint Declaration between China and the United Kingdom, and "the essential characteristic of this agreement is the theory of 'one country, two systems' upon which it is based." See *id.* at 137. Hong Kong is the first SAR in China, and China's policies for this autonomous region will remain static for 50 years. See *id.* These policies include "the vesting of executive, legislative, and independent judicial power in the Hong Kong SAR and retaining laws currently in force in Hong Kong 'basically unchanged, [. . .] including the current social and economic systems and life-style.'" *Id.* Hong Kong is also exempt from central government taxation, and has control over its customs and financial status. See *id.* The executive and legislative bodies are composed of local inhabitants selected in local elections. See *id.* at 138-39. The judiciary is independent of the central Chinese government. See *id.* at 139.

193. Buyda, *supra* note 182, at 2. Granting Chechnya a special status with unique legal rights is not as outlandish as it may seem, given the structure of Russian federalism. "Among the 89 republics and provinces that make up the Russian Federation, power-sharing agreements with Moscow range from total subjugation to the virtual independence enjoyed by influential regions such as Tartarstan and Yakutia." Williams, *supra* note 180, at A6. See also Olga Solodova, *Chechen Sovereignty Claims Shouldn't Be Dramatized*, ITAR-TASS, Feb. 11, 1997, at 1.

194. See KONST. RF (1993) arts. 4, 13, 14, 15, 72, 76.

195. See *id.* art. 66, § 5.

196. See *id.* preamble, art. 5.

197. Vadim Makarenko, *Do Russians Need Chechnya?*, RUSSIAN PRESS DIG., Oct. 11, 1996, available in Westlaw 1996 WL 6539072. See also Sanobar Shermatova, *Is Moscow Preparing for Chechnya's Independence?* MOSCOW NEWS, Sept. 25, 1997; Russian Interior Minister Demands Referendum on Chechen Status, AGENCE FRANCE PRESSE, Oct. 10, 1996, available in LEXIS, EUROPE Library, MOSNWS File.

Article 3.3 states that "Referendums [sic] and free elections shall be the highest expression of the people's authority."¹⁹⁸ Articles 135 and 136 on amendments to the Constitution may also serve as a basis for a referendum.¹⁹⁹

The main problem with a referendum is that it will only end the Chechen-Russian conflict if the people vote for Chechen independence. The Chechens believe themselves to be independent already, so they would not honor a vote the other way, and this could reignite the war. Those in support of a referendum, however, anticipate a vote in favor of Chechen independence. This is based upon the anti-war, and more generally, the anti-Chechen sentiment of the masses.²⁰⁰

As an economic and social matter, many Russians would gladly support recognition of Chechen independence. The Chechens are generally thought by Russians to be barbaric and are portrayed as such by the media and the Russian government.²⁰¹ Journalists in Chechnya are routinely kidnapped and held for ransom. Despite the Republic's utter destruction, it is still a "universally armed republic, [where] an automatic weapon is for many their sole 'tool' for work."²⁰² Beyond that, rebuilding the country and its infrastructure will cost billions: about \$700 million (U.S.) had already been set aside in the Russian budget by early 1997 to rebuild the region.²⁰³

The referendum option, while constitutionally feasible, runs too great a risk of fueling further hostilities. Moreover, Russian aid to the region will likely cease if Chechnya gains full independence. The Chechens could not force Russia to pay reparations for war damage, and they would never be able to raise ample revenue to rebuild due to the scale of the destruction and the existing atmosphere of clan-rule and chaos.²⁰⁴

198. KONST. RF (1993) art. 3, § 3.

199. Such an amendment would likely fall under Chapter 3 of the Constitution, where the republics are enumerated, thus triggering the article on amending Chapters 3-8, Article 136.

200. See, e.g., Sergey Roy, *No Happy Ending for Chechnya*, Moscow News, Sept. 26, 1996, at 38.

201. "Amid all of the Russian prejudices against Caucasians, there is particular contempt for Chechens. They are depicted by the media as a nation of thugs and criminals, relying on strong-arm techniques to safeguard their claim on the takings of Moscow's drug dealers, prostitutes, arm merchants and smugglers." Klein, *supra* note 10, at 8. The Russian Leadership referred to the Chechens as "bandits" throughout the war. Specter, *supra* note 186, at A3. General Lebed was the only official who refused to refer to the Chechens in such a manner. See *id.*

202. Arkady Popov, *Controlling Chechnya*, MOSCOW TIMES, May 16, 1997, available in LEXIS, EUROPE Library, MOSTMS File.

203. See *Chechnya: New President but, Technically, Not Independent*, CNN INTERACTIVE, Feb. 12, 1997, at 2.

204. See Specter, *supra* note 186, at A3.

C. The Chechen Position: Chechnya Did Not Secede from the Russian Federation

A third possibility lies in the Chechen argument that the existence of Chechnya does not violate the Russian Constitution or Russia's territorial integrity because Chechnya was never part of Russia, and thus, did not and could not secede.²⁰⁵ The Chechens argue that even though the Chechen Republic was included as a subject of the Federation in Article 65 of the Constitution, they had already declared their independence before the Constitution was drafted.²⁰⁶ Furthermore, the Chechens argue that they took no part in the creation of the Federation, did not sign the Federation Treaty, and did not take part in the drafting of or voting for the Russian Constitution.²⁰⁷ This would seem to run counter to the right to self-determination expounded in the preamble and Article 5.3 of the Russian Constitution, as well as in the Soviet Constitution in effect before 1992.²⁰⁸

International law generally does not recognize the right of secession as part of the right of national self-determination.²⁰⁹ The 1975 Helsinki Act provides that nations can exercise their right to self-determination only within existing state boundaries.²¹⁰ The Chechens would counter that they never seceded. However, the fact that the international community recognized the Russian Federation in accordance with the Soviet boundaries means that Chechnya was understood by the world to be a part of the new Russian Federation.²¹¹ Thus, the Chechens' declaration of independence is not a mere refusal to accede to the new State.

The question remains whether Chechnya has constituted itself as an

205. See *Russia—Chechnya's Territorial Status Remains a Question*, INTERFAX, Sept. 19, 1996, available in 1996 WL 12557284; *Russia's Territorial Integrity Non-Negotiable: Premier*, AGENCE FRANCE-PRESSE, Oct. 8, 1996, available in 1996 WL 12153563.

206. See Khamil Delmayev, *Will Chechnya Become a Clan-Governed Republic*, Moscow News, Sept. 1, 1995, available in LEXIS, EUROPE Library, MOSNWS File.

207. See *id.*

208. KONST. RF (1993) preamble, art. 5.

209. The Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2649, U.N. GAOR, 25th Sess., 1915th mtg. at XXXV, U.N. Doc. A/RES/2649 (1970), known as the "Friendly Relations Declaration," was intended to encourage a "speedy end" to colonialism. A more general interpretation of the document to support secessionist claims outside of the colonialist context is explicitly negated in the instrument itself, which states:

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination for peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Id.

210. See Helsinki Final Act, Conference on Security and Co-Operation in Europe, Aug. 1, 1975.

211. See Walker, *supra* note 129, at 56.

independent state since its secession.²¹² The Montevideo Convention of 1933 defines a state as "a person of international law . . . [possessing] (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states."²¹³ Chechnya fulfills the first three criteria; however, it does not have the capacity to enter into international relations due to Russia's threat to sever diplomatic ties with any state who recognizes Chechnya as independent.²¹⁴ As a result, no state or international organization has done so.²¹⁵ Therefore, the Chechen position is not a practicable third option so long as Russia refuses to recognize its independence.

D. A Pragmatic Compromise: "Special Status" for Chechnya

The foregoing analysis establishes the "special status" option as the most realistic solution to the Chechen crisis. While it is true that the Russian leadership has been promoting this direction from the outset, a key element, or concession, that they have failed to make explicit in their "Tartarstan model" offer is the recognition of Islam in Chechnya. It is uncertain whether the current Chechen leadership, under severe pressure from militant Islamic factions, will accept such an offer, but the Republic's dire situation detracts from its strength as a bargaining partner. Moreover, a special status for Chechnya will effectively give the Republic the social autonomy it seeks, in addition to the added benefit of greater economic security and assistance provided by Russia.

In any event, a return to war appears unlikely. Russia's humiliating defeat not only exhibited the Russian military's ineffectiveness but also brought the armed forces to "the brink of disintegration."²¹⁶ As Yeltsin's former National Security Advisor Ivan Rybkin explained, "[s]ome people in power want to settle the problems of Chechnya by the old Bolshevik principle . . . [h]it first and think afterward. We have already tried that way. It didn't work."²¹⁷

212. For an in-depth analysis of the legitimacy of Chechnya's bid for independence in the context of the dissolution of the former U.S.S.R., see Trent Tappe, *Chechnya and the State Of*, 34 COLUM. J. TRANSNAT'L L. 255 (1997) (arguing that Chechnya's claim of independence parallels that of Lithuania, and that Chechnya is entitled to be recognized as independent). See also Peter Daniel DiPaola, *A Noble Sacrifice? Jus Ad Bellum and the International Community's Gamble in Chechnya*, 4 IND. J. GLOBAL LEGAL STUD. 435 (1997) (contending that Chechnya has a recognizable claim of independence due to the unrepresentative nature of the Russian government).

213. BARRY E. CARTER & PHILLIP R. TRIMBLE, *INTERNATIONAL LAW* 457 (2nd ed. 1996). See also RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE U.S. (1987), §201 ("Under international law, a state is an entity that has a defined territory and a permanent population, under the control of its own government, and that engages or has the capacity to engage in, formal relations with other such entities.").

214. See *Moscow to Deal With Chechnya's Recognition*, XINHUA ENGLISH NEWSWIRE, Jan. 3, 1997, 1997 WL 3740449.

215. See *id.*

216. Baev, *supra* note 57, at 56.

217. Specter, *supra* note 186, at A3.

Conclusion

There is no simple solution to the Russian-Chechen impasse. The Chechen Republic has been de facto independent for a number of years, a fact that Russian officials have acknowledged.²¹⁸ Russia, however, treats Chechnya's actions with a kind of "legal dualism," whereby everything is treated as if it is a matter of course.²¹⁹ That these actions contradict the Russian Constitution and federal laws is a fact that Russia has gotten used to.²²⁰ Perhaps this status could be sustained indefinitely, but such a state makes a mockery of the Constitution, an instrument that is supposed mold the new Russia into a law-based society.

The best course would be to legitimate Russo-Chechen relations within the framework of the Constitution. Of the proposed resolutions, the most potential exists in granting Chechnya a "special status" within the Russian Federation. This change in status, envisioned by the Constitution itself, would keep Chechnya in the Federation while allowing sufficient autonomy for the Republic to embrace its Islamic tradition through their legal system. In effect, this approach would retain the status quo but eliminate the tensions surrounding the inter-governmental relations and the potential for further warring. While this solution will not solve the Republic's dire social conditions, normalizing its relationship with Russia will permit Chechnya the economic and cultural latitude to start down that path.

218. Anatoly Shabad, *Year of Living Peacefully*, MOSCOW TIMES, Aug. 22, 1997, at 2, available in LEXIS, EUROPE Library, MOSTMS File. See also Roy, *supra* note 200, at 3; Solodova, *supra* note 193, at 1; Siren, *supra* note 83, at 87.

219. Shabad, *supra* note 218.

220. See *id.* at 2.